(4) No provision of this Section 15 shall apply to the election of any Class B Director (as defined in the Articles of Incorporation).

ARTICLE III

DIRECTORS

Section 1. Powers. The business and affairs of the corporation shall be managed by or under the direction of its board of directors.

Section 2. Tenure and Qualifications. Each director shall hold office until the next annual meeting of shareholders following his or her election and until his or her successor shall have been duly elected and qualified or until his or her earlier death, resignation or removal. A director need not be a resident of the State of Illinois or a shareholder of the corporation. A director may resign at any time by giving written notice to the board of directors, or to the chairman of the board, chief executive officer, president or secretary of the corporation. A resignation shall be effective when the notice is given, unless the notice specifies a future date. In addition to the directors who shall be elected by the shareholders of the corporation, the board of directors may also designate, by resolution of the Board, an advisory director who shall be entitled to attend all meetings of the board, but shall not be entitled to vote on any matters before the board. Except as set forth in this Section 2, the advisory director shall have no rights as a director either under these Bylaws, Dynegy's charter, Illinois law or any other agreement to which the corporation is a party. Notwithstanding the foregoing, an advisory director shall be entitled to receive compensation for his or her services as a director in the same amount and manner that such director would be entitled to receive compensation as an employee director or non-employee director, as the case may be, if such director were elected by the stockholders of the corporation.

Section 3. Place of Meetings. The board of directors of the corporation may hold meetings, both regular and special, either within or without the State of Illinois.

Section 4. Regular Meetings. A regular meeting of the board of directors shall be held without other notice than this by-law, immediately after, and at the same place as, the annual meeting of shareholders. Other regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board.

Section 5. Special Meetings. Special meetings of the board of directors may be called by the chairman of the board or the lead director and shall be called by the chairman of the board or the secretary upon the written request of any three directors.

Section 6. Notice. Notice of any special meeting shall be given: (i) at least five business days (or two business days if telephonic participation is provided for with respect to the special meeting) prior thereto if the notice is given personally or by an electronic transmission, (ii) at least five business days (or two business days if telephonic participation is provided for with respect to the special meeting) prior thereto if the notice is given by having it delivered by a third party entity that provides delivery services in the ordinary course of business and guarantees delivery of the notice to the director no later than the following business day, and (iii) at least seven business days prior thereto if the notice is given by mail. Notice of any meeting where any actions described in Section 7.(B) will be considered shall be given to Class B directors at least 30 days before the vote on any such action and shall set forth the material terms thereof. For this purpose, the term "electronic transmission" may include, but shall not be limited to, a facsimile, email or other electronic means. Notice shall be delivered to the director's business address and/or telephone number and shall be deemed given upon electronic transmission, upon delivery to the third party delivery service, or upon being deposited in the United States mail with postage thereon prepaid. Any director may waive notice of any meeting by signing a written waiver of notice either before or after the meeting. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Section 7. Quorum; Vote Required, Actions Requiring Approval.

(A) Except as provided in Section 7.(B), a majority of the directors then in office, but not less than a majority of the minimum number of directors specified by the articles of incorporation for the variable range of the number of directors, shall constitute a quorum for the transaction of business at any meeting of the board of directors, and the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. If less than a majority of such number of directors are present at the meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

(B) Notwithstanding anything to the contrary herein, so long as any shares of Class B Common Stock of the corporation are issued and outstanding and the holders of Class B Common Stock have not terminated their rights to block such actions granted to them under Section 4.1 of the Amended and Restated Shareholder Agreement between the corporation and Chevron U.S.A. Inc. dated as of August 11, 2003, the corporation shall not take (or permit to be taken in its capacity as a shareholder or partner or otherwise permit any subsidiary of the corporation to take) any of the following actions if all of the Class B directors present at the meeting where such action is considered vote against such action:

(1) amendment of Article II, Section 15(C)(4), Article III, Sections 6, 7.(B), 7.(C), or 12, Article IV, Section 1, Article V, Section 1, or Article IX of these Bylaws, or amendment of Article IV, Section 2A, of the articles of incorporation of the corporation;

(2) adoption of any provision of these Bylaws or amendment to the articles of incorporation which would substantially and adversely affect the rights of the holders of the Class B Common Stock;

(3) authorization of new shares of any stock of the corporation where the aggregate consideration to be received by the corporation therefor exceeds the greater of (a) $1 billion or (b) one-quarter of the Corporation's Market Capitalization;

(4) any disposition of all or substantially all of the corporation's Liquids Business (defined below, so long as there shall be in effect any substantial agreements between Chevron U.S.A. Inc. and the corporation relating to such business, except for a contribution of such Liquids Business to a joint venture, limited liability company or other form of partnership in which the corporation has a majority direct or indirect interest;

(5) any merger or consolidation of the corporation or any subsidiary (other than a merger or consolidation by a subsidiary with the corporation or another subsidiary), any joint venture, any liquidation or dissolution of the corporation, any voluntary initiation of a proceeding in bankruptcy or acquiescence to an involuntary initiation of a proceeding in bankruptcy, any acquisition of stock or assets by the corporation or its subsidiaries, or any issuance of common or preferred stock by the corporation, any of which would result in the payment or receipt of consideration (including the incurrence or assumption of indebtedness and liabilities) having a fair market value exceeding the greater of (a) $1 billion or (b) one-quarter of the Corporation's Market Capitalization (as defined below); or

(6) any other material transaction (or series of related transactions) which would result in the payment or receipt of consideration (including the incurrence or assumption of indebtedness and liabilities) having a fair market value exceeding the greater of (a) $1 billion or (b) one-quarter of the Corporation's Market Capitalization, and is out of the ordinary course of business for the corporation.

For purposes of this Section, the "Corporation's Market Capitalization" means the sum of (a) the product of (x) the total number of shares outstanding of Class A and Class B Common Stock of the corporation on the relevant date and (y) the closing price of the Class A Common Stock on the New York Stock Exchange ("**NYSE**") at the end of the regular session represented by the consolidated tape, Network A, (b) the product of (x) the total number of shares outstanding of all of the corporation's NYSE traded preferred stock on the relevant date and (y) the closing price of such preferred stock on the NYSE at the end of the regular session represented by the consolidated tape, Network A and (c) the aggregate value of the liquidation preference of any non-NYSE listed non-convertible stock of the corporation and (d) the aggregate value of the greater of the liquidation preference and the value of the underlying common stock (calculated in accordance with (a) of this paragraph) issuable upon conversion of any non-NYSE listed convertible preferred stock on the relevant date. The "Liquids Business" means the processing of natural gas to produce natural gas liquids, the fractionation of natural gas liquids, and the purchase, sale and transportation of such natural gas liquids.

(C) The executive officers of the Corporation shall advise the members of the Board of Directors of the consideration of a proposal relating to any matter of the type described in Section 7.(B) at such time as they determine to give substantive attention to such proposal.

Section 8. Informal Action by Directors. Any action required to be taken at a meeting of the board of directors, or any other action which may be taken at a meeting of the board of directors or a committee thereof, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the directors entitled to vote with respect to the subject matter thereof, or by all the members of such committee, as the case may be. The consent shall be evidenced by one or more written approvals, each of which sets forth the action taken and bears the signature of one or more directors. All the approvals evidencing the consent shall be delivered to the secretary to be filed in the corporate records. The action taken shall be effective when all the directors have approved the consent unless the consent specifies a different effective date. Any such consent signed by all the directors or all the members of a committee shall have the same effect as a unanimous vote, and may be stated as such in any document filed with the Secretary of State of Illinois under the Business Corporation Act.

Section 9. Participation with Communications Equipment. Members of the board of directors or of any committee of the board of directors may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

Section 10. Compensation of Directors. The board of directors shall have the authority to fix the compensation of directors by the affirmative vote of a majority of the directors then in office and irrespective of any personal interest of any of its members. In addition, the directors may be paid their expenses, if any, of attendance at each meeting of the board of directors. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be compensated additionally for so serving.

Section 11. Presumption of Assent. A director of the corporation who is present at a meeting of the board of directors at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless the dissent of that director shall be entered in the minutes of the meeting or unless that director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 12. Agenda Items. No action may be taken at a meeting of the board of directors with respect to any matter that was not previously set forth on an agenda for such meeting delivered to the directors at least two business days prior to such meeting if either a majority of the Class B Directors present at such meeting or a majority of the other directors present at such meeting oppose taking action at such meeting with respect to such matter.

Section 13. Lead Director. At the board meeting associated with the annual meeting of shareholders each year, the non-management directors shall determine whether to designate a lead director to serve until the next annual board meeting. If the non-management directors determine to designate a lead director, he shall be a non-management director selected by a majority of the non-management directors at such meeting. The lead director shall have the power: to convene executive sessions of the non-management directors of the board and shall coordinate, develop an agenda for, and moderate such sessions; to consult with the non-management directors and serve as a conduit to senior management of the corporation of the views of the non-management directors when the board of directors is not in session; to engage outside advisors to report to the board of directors or a committee thereof; to refer to the chairman of any committee of the board of directors matters within the scope of such committee's authority; to confer with outside counsel, auditors and other advisors to the corporation; and to consult with the chairman of the board regarding the agenda of matters for meetings of the board of directors.

ARTICLE IV

COMMITTEES OF THE BOARD OF DIRECTORS

Section 1. Establishment of Committees. A majority of the directors may create one or more committees and appoint members of the board of directors to serve on the committee or committees. Each committee shall have two or more members, who serve at the pleasure of the board of directors. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. Any vacancy in a committee may be filled by the board of directors. Each committee shall keep regular minutes of its meetings and report the same to the board of directors as required. Unless precluded by applicable law or any applicable rule of the New York Stock Exchange, Inc., each committee other than the Corporate Governance and Nominating Committee shall have at least one Class B Director thereon.

Section 2. Manner of Acting. Unless the appointment by the board of directors requires a greater number, a majority of any committee shall constitute a quorum and a majority of a quorum shall be necessary for action by any committee. A committee may act by unanimous consent in writing without a meeting. Each committee, by majority vote of its members, shall determine the time and place of meetings and the notice required therefor.

Section 3. Authority of Committees. To the extent specified by resolution of the board of directors and these by-laws, each committee may exercise the authority of the board of directors, provided, however, a committee may not:

a) authorize distributions, except for dividends to be paid with respect to shares of any preferred or special classes or any series thereof;

b) approve or recommend to shareholders any act requiring the approval of shareholders under applicable law;

c) fill vacancies on the board or any committee;

d) elect or remove officers or fix the compensation of any member of the committee;

e) adopt, amend or repeal these by-laws;

f) approve a plan of merger not requiring shareholder approval;

g) authorize or approve reacquisition of shares, except according to a general formula or method prescribed by the board of directors;

h) authorize or approve the issuance or sale, or contract for sale, of shares, or determine the designation and relative rights, preferences, and limitations of a series of shares, except the board may direct that a committee may fix the specific terms of the issuance or sale or contract for sale, or the number of shares to be allocated to particular employees under an employee benefit plan; or

i) amend, alter, repeal, or take action inconsistent with any resolution or action of the board of directors when the resolution or action of the board of directors provides by its terms that it shall not be amended, altered or repealed by action of a committee.

Section 4.

(a) Executive Committee. The Board of Directors shall establish an Executive Committee to be comprised of the Chairman of the Board, Chief Executive Officer, Lead Director and the other committee chairpersons; provided, however, that if none of the Class B Directors shall occupy any of the foregoing positions, the Executive Committee shall also include one Class B Director, such person to be appointed by Chevron U.S.A. Inc. The Executive Committee, during intervals between meetings of the Board of Directors, shall have, and may exercise, subject to the limitations contained in Section 3 of this Article, the powers of the Board of Directors in the management of the business and affairs of the corporation.

(b) Compensation and Human Resources Committee. The Board of Directors shall establish a Compensation and Human Resources Committee consisting of directors who are not otherwise employed by the corporation. The Compensation and Human Resources Committee shall review from time to time, the salaries, compensation and employee benefits for the executive officers and employees of the corporation and make recommendations to the board of directors concerning such matters. The Compensation and Human Resources Committee shall be responsible for all aspects of the Company's stock plans, including plan administration, and shall review and recommend to the Board of Directors new plans or changes to current plans, including increasing the number of shares reserved for such plans.

(c) Corporate Governance and Nominating Committee. The Board of Directors shall establish a Corporate Governance and Nominating Committee consisting of directors who are not otherwise employed by the corporation. The Corporate Governance and Nominating Committee shall consider matters related to corporate governance, develop general criteria regarding the selection and qualifications for members of the Board of Directors and recommend candidates for election to the Board of Directors.

(d) Audit and Compliance Committee. The Board of Directors shall establish an Audit and Compliance Committee consisting of independent, "disinterested" directors. The Audit and Compliance Committee shall review the selection and qualifications of the independent public accountants employed by the corporation to audit the financial statements of the corporation and the scope and adequacy of their audits, consider recommendations made by such independent public accountants, review internal financial audits of the corporation, and report any additions or changes it deems necessary to the Board of Directors.

(e) Risk, Environment and Operations Committee. The Board of Directors shall establish a Risk, Environment and Operations Committee consisting of directors who may otherwise be, but need not be, employed by the corporation. The Risk, Environment and Operations Committee shall consider matters related to insurance and environmental issues and shall make recommendations to the Board of Directors concerning such matters.

ARTICLE V

OFFICERS

Section 1. Officers. The officers of the corporation shall consist of a chief executive officer, chairman of the board, president, one or more vice presidents (the number, seniority and any other designations thereof to be determined by the board of directors), a secretary, a treasurer, a controller, and such other officers as may be elected by the board of directors. Any two or more offices may be held by the same person.

Section 2. Additional Officers and Agents. The board of directors may appoint such other officers and agents as it shall deem necessary, who shall exercise such powers and perform such duties as shall be determined from time to time by the board.

Section 3. Compensation of Officers. The compensation of all officers and agents of the corporation shall be fixed by or under the direction of the board of directors. No officer shall be prevented from receiving such compensation by reason of the fact that such officer is also a director of the corporation.

Section 4. Term of Office and Vacancy. Each elected officer shall hold office until a successor is elected and qualified or until such officer's earlier resignation or removal. Any vacancy occurring in any office of the corporation shall be filled by the board of directors for the unexpired portion of the term. Each appointed officer shall serve at the pleasure of the board of directors. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 5. Removal. Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 6. Chief Executive Officer. The chairman of the board may, but need not, be the chief executive officer of the corporation. The chief executive officer shall (a) determine and administer the policies of the corporation, subject to the instructions of the board of directors; (b) be authorized to execute all documents in the name and on behalf of the corporation; and (c) perform all duties incident to the office of chief executive officer and such other duties as the board of directors or bylaws may from time to time prescribe.

Section 7. Chairman of the Board. The chairman of the board, or in his or her absence, the president, shall preside at all meetings of the shareholders and the board of directors.

Section 8. President. The president shall (a) be the chief operating officer of the corporation, and shall in general be in charge of the operations of the corporation, subject to the control of the board of directors; (b) be authorized to execute all documents in the name and on behalf of the corporation; and (c) perform all duties incident to the office of president and such other duties as the board of directors may from time to time prescribe.

Section 9. Vice Presidents. In the absence of the president or in the event of the inability or refusal of the president to act, the vice president (or in the event there is more than one vice president, the vice presidents in the order of seniority of title, or in the event of equal seniority, then in the order designated, or in the absence of any designation, then in the order named in the most recent resolution providing for the annual election of officers) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice president shall perform such other duties and have such other powers as the board of directors or the chief executive officer or president may from time to time prescribe.

Section 10. Secretary. The secretary shall (a) attend meetings of the board of directors and meetings of the shareholders and record minutes of the proceedings of the meetings of the shareholders and of the board of directors, and when required, shall perform like duties for the committees of the board; (b) assure that all notices are duly given in accordance with the provisions of these by-laws or as required by law; (c) maintain custody of the corporate records of the corporation; (d) keep or cause to be kept a register of the post office address of each shareholder as furnished to the secretary by such shareholder; (e) sign with the chief executive officer, president or a vice president certificates for shares of the corporation, the issuance of which shall have been authorized by resolution of the board of directors; (f) have charge of the stock transfer books of the corporation and authority over a stock transfer agent, if any; (g) certify copies of the bylaws, resolutions of the shareholders and board of directors and committees thereof and other documents of the corporation as true and correct copies thereof; and (h) perform all duties incident to the office of secretary and such other duties as the board of directors or the chief executive officer or president may from time to time prescribe.

Section 11. Assistant Secretaries. The assistant secretary, or if there is more than one, the assistant secretaries, respectively, as authorized by the board of directors, may sign with the president or a vice president certificates for shares of the corporation, the issuance of which shall have been authorized by resolution of the board of directors, and shall, in the absence of the secretary or in the event of the inability or refusal of the secretary to act, perform the duties and exercise the powers of the secretary, and shall perform such other duties as the board of directors, chief executive officer, president or secretary may from time to time prescribe.

Section 12. Treasurer. The treasurer shall (a) have custody of the funds and securities of the corporation; (b) deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors; (c) maintain adequate accounts of the corporation; (d) disburse the funds of the corporation as may be ordered by the board of directors; (e) submit financial statements to the president and the board of directors; and (f) perform all duties incident to the office of treasurer and such other duties as the board of directors or the chief executive officer or president may from time to time prescribe.

Section 13. Assistant Treasurers. The assistant treasurer, or if there is more than one, the assistant treasurers, respectively, as authorized by the board of directors, shall, in the absence of the treasurer or in the event of the inability or refusal of the treasurer to act, perform the duties and exercise the power of the treasurer and shall perform such other duties and have such other power as the board of directors, the chief executive officer, president or treasurer may from time to time prescribe.

Section 14. Controller. The controller shall conduct the accounting activities of the corporation, including the maintenance of the corporation's general and supporting ledgers and books of account, operating budgets, and the preparation and consolidation of financial statements.

Section 15. General Powers of Officers. The chairman of the board, chief executive officer, president, any executive vice president, senior vice president and any vice president, may sign without countersignature or attestation any deeds, mortgages, bonds, contracts, reports to public agencies, or other instruments whether or not the board of directors has expressly authorized execution of such instruments, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors or by these by-laws solely to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed. Any other officer of this corporation may sign contracts, reports to public agencies, or other instruments which are in the regular course of business and within the scope of his or her authority, except where the signing and execution thereof shall be expressly delegated by the board of directors or by these by-laws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed.

ARTICLE VI

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The board of directors may authorize any officer or officers, or agent or agents, to enter into any contract and execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, Notes. All checks, drafts or other orders for the payment of money, notes and other evidences of indebtedness, issued in the name of the corporation, shall be signed by such officer or officers, or agent or agents, of the corporation and in such manner as shall from time to time be determined by resolution of the board of directors.

Section 3. Deposits. All funds of the corporation other than petty cash shall be deposited to the credit of the corporation in such banks, trust companies or other depositories as the board of directors may select.

ARTICLE VII

SHARES

Section 1. Issued Shares. The issued shares of the corporation may be represented by certificates, or may be uncertificated shares, in either case in whole or in part, as determined and authorized by the board of directors.

Section 2. Certificates for Shares. Certificates representing shares of the corporation shall be in such form as may be determined by the board of directors. Such certificates shall be signed by the chairman of the board, chief executive officer or president and by the secretary or an assistant secretary. If a certificate is countersigned by a transfer agent or registrar, other than the corporation itself or its employee, any other signatures or countersignature on the certificate may be facsimiles. If any officer of the corporation, or any officer or employee of the transfer agent or registrar, who has signed or whose facsimile signature has been placed upon such certificate ceases to be an officer of the corporation, or an officer or employee of the transfer agent or registrar, before such certificate is issued, the certificate may be issued by the corporation with the same effect as if the officer of the corporation, or the officer or employee of the transfer agent or registrar, had not ceased to be such at the date of its issue. Certificates for shares shall be individually numbered or otherwise individually identified. Each certificate for shares shall state the name of the registered owner of the shares in the stock ledger, the number and the class and series, if any, of such shares, and the date of issuance of the certificate. If the corporation is authorized to issue more than one class of stock, a full summary or statement of all of the designations, preferences, qualifications, limitations, restrictions, and special or relative rights of each class authorized to be issued, and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences among such series, shall be set forth upon the face or back of the certificate. Such statement may be omitted if it shall be set forth upon the face or back of the certificate that such statement, in full, will be furnished by the corporation to any shareholder upon request and without charge.

Section 3. Uncertificated Shares. The board of directors may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, and may provide an election by individual shareholders to receive certificates or uncertificated shares and the conditions of such election, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the registration of issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to the Business Corporation Act or these by-laws. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

Section 4. Registration of Transfers of Shares. Transfers of shares shall be registered in the records of the corporation upon request by the registered owner thereof in person or by a duly authorized attorney, upon presentation to the corporation or to its transfer agent (if any) of a duly executed assignment and other evidence of authority to transfer, or proper evidence of succession, and, if the shares are represented by a certificate, a duly endorsed certificate or certificates for shares surrendered for cancellation, and with such proof of the authenticity of the signatures as the corporation or its transfer agent may reasonably require. The person in whose name shares are registered in the stock ledger of the corporation shall be deemed the owner thereof for all purposes as regards to the corporation.

Section 5. Lost Certificates. The corporation may issue a new share, certificate in the place of any certificate theretofore issued by it, alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact, by the person claiming the share certificate to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or certificates the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or the owner's legal representative, to advertise the same in such manner as it shall require or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate or certificates alleged to have been lost, stolen or destroyed.

ARTICLE VIII

OTHER PROVISIONS

Section 1. Distributions. The board of directors may authorize, and the corporation may make, distributions to its shareholders, subject to any restriction in the articles of incorporation and subject to any limitations provided by law.

Section 2. Fiscal Year. The fiscal year of the corporation shall be fixed, and shall be subject to change, by the board of directors.

Section 3. Seal. The board of directors may, but shall not be required to, provide by resolution for a corporate seal, which may be used by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

ARTICLE IX

EMERGENCY BY-LAWS

Section 1. Emergency Board of Directors. In the event a quorum of the board of directors cannot readily be convened for action due to (a) an attack or imminent attack on the United States or any of its possessions, (b) any nuclear or atomic disaster, or (c) any other catastrophe or emergency condition, the vacant director positions shall be filled by the following persons (provided in each case such person is not already a director and is willing and able to serve) in the following order: the president, the vice presidents in order of seniority, the treasurer, the secretary, any other officers in order of seniority and any other persons in such order as named by the board of directors on any list as it may compile from time to time for purposes of appointing such successor directors; *provided, however*, that to the extent possible, the holders of Class B Common Stock shall be entitled to nominate a number of directors to such board of directors proportionate to the representation on the board of directors immediately prior to such emergency condition to which the holders of Class B Common Stock were entitled. Such new board of directors shall be referred to as the emergency board of directors of the corporation. The initial Chairman of the Board of the emergency board of directors ("Chairman") shall be the regularly-elected director, if any, who has served on the board of directors for the longest period of time and, if all directors on the emergency board of directors are successor directors appointed pursuant to this Section, the Chairman shall be determined according to the same order of priority as such successor directors are appointed pursuant to this Section. The directors appointed pursuant to this Section shall serve until the next annual or special meeting of shareholders at which directors are to be elected or until the emergency condition shall have terminated.

Section 2. Powers. The emergency board of directors shall have all of the rights, powers and duties of the board of directors except such emergency board of directors may not amend the Articles of Incorporation of the corporation nor approve a merger, sale of all or substantially all of the assets of the corporation, liquidation or dissolution.

Section 3. Notice of Meetings. Notice of any meeting of the emergency board of directors held during any emergency described in Section 1 of this Article IX may be given only to such directors or successor directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including, without limitation, publication or radio.

Section 4. Liability. No officer, director or employee of the corporation acting in accordance with this Article IX shall be liable to the corporation, except for willful misconduct.

Section 5. By-laws. To the extent not inconsistent with this Article IX, the by-laws of the corporation shall remain in effect during any emergency described in Section 1 of this Article IX.

Section 6. Interpretation. If, by operation of law or otherwise, any of the provisions of this Article IX are deemed to be invalid or not controlling, such provisions shall be construed by any court or agency having competent jurisdiction as a determinative factor evidencing the intent of the corporation.

ARTICLE X

AMENDMENTS

Subject to the provisions of the Articles of Incorporation, these by-laws may be altered, amended or repealed, and new by-laws may be adopted, by the board of directors; provided that no amendment or repeal of Article II, Section 15(c)(4), Article III, Sections 6, 7.(B), 7.(C) or 12, Article IV, Section 1, Article V, Section 1, or Article IX, Section 1, nor the adoption of any provision of these Bylaws which would substantially and adversely affect the rights of the holders of Class B Common Stock shall be effective except upon the approval of the affirmative vote of the majority of the Class B directors and a majority of the entire number of directors then in office. Subject to the provisions of the articles of incorporation, these by-laws may also be altered, amended or repealed by the shareholders of the corporation.

ARTICLE XI

INDEMNIFICATION OF EMPLOYEES AND AGENTS

The corporation may indemnify any agent or employee of the corporation who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (including, but not limited to any such proceeding by or in the right of the corporation) whether civil, criminal, administrative or investigative, by reason of the fact that he is or was serving the corporation at its request and in the course and scope of his duties and acting in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, against expenses (including reasonable attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action, suit or proceeding.

EX-10.15 4 dex1015.htm EMPLOYMENT AGREEMENT BETWEEN CAROL F. GRAEBNER AND DYNEGY INC.

Exhibit 10.15

[DYNEGY LETTERHEAD]

March 11, 2003

Ms. Carol F. Graebner
101 Wescott, No. 1804
Houston, TX 77007

Dear Carol:

Set forth below are the terms of your employment with Dynegy Inc. (hereinafter referred to as the "Company").

1. Title and Duties

Your title shall be Executive Vice President & General Counsel. You will report to Bruce Williamson, President & CEO. Your duties will include such lawful duties as may be delegated from time to time by the President and Chief Executive Officer. You shall devote your full time, energy and skill to the performance of your duties for the Company, and will exercise due diligence and reasonable care in the performance of such duties. You will be employed at the Company's headquarters in Houston, Texas.

2. Term

(a) Unless earlier terminated as provided for herein, the term of this Agreement will be for two (2) years, beginning on the Effective Date and ending on the second anniversary of the Effective Date (such period, and any extension thereof pursuant to the next succeeding sentence, the "Term"). At the time the Term would otherwise expire, the Term shall automatically be extended for an additional one (1) year period unless either the Company or you provide written notice not less than sixty (60) days prior to the date on which this Agreement would otherwise be automatically extended that such party is electing not to so extend the Term. The term "Effective Date" means your first day of employment with Dynegy.

(b) If your employment with Dynegy is terminated for "cause" or terminates due to your voluntary resignation (other than pursuant to a voluntary resignation resulting from a "constructive termination" as set forth in Paragraph 2(d)), Dynegy shall have no further obligation to you except for the payment of amounts due before the date of such termination. You further agree that the benefits which you have received from the execution of this Agreement through the date of such termination constitute sufficient consideration for your obligations pursuant to Paragraph 4, notwithstanding the fact that the Company has no further obligation to you except for the payment of amounts due before the date of such a termination for cause or voluntary resignation.

For purposes of this Agreement, you may be terminated for "cause" as a result of (i) refusal to implement or adhere to lawful policies or lawful directives of the Board of Directors or the President or Chief Executive Officer; (ii) engaging in conduct which is materially (as described in and determined under the Dynegy Inc. Disclosure Controls and Procedures Policy) injurious (monetarily or otherwise) to the Company or any of its affiliates (including, without limitation, misuse of the Company's or an affiliate's funds or other property); (iii) misconduct or dishonesty directly related to the performance of your duties for the Company or gross negligence in the performance of your duties for the Company; (iv) conviction (or entering into a plea bargain admitting criminal guilt) in any criminal proceeding involving a felony or a crime of moral turpitude; (v) drug or alcohol abuse; (vi) continued failure to perform your duties under this Agreement which is not cured within 10 days after written notice is provided to you by the Company; or (vii) any other material breach of this Agreement by you which is not cured within 10 days after written notice is provided to you by the Company.

(c) If your employment is terminated during the Term by the Company without cause or by you due to a resignation following "constructive termination" (as defined below), you shall receive the severance pay and other benefits for which you are eligible under the Dynegy Inc. Executive Severance Pay Plan (effective November 1, 2001) (the "Plan") in lieu of the payments and benefits described in Paragraph 3 hereof. In addition to any severance pay and other benefits for which you are eligible under the Plan, you shall receive (i) a lump sum amount equal to the value of the 401(k) Plan matching contribution and Portable Retirement Plan benefit you otherwise would have received through the end of the Term of this Agreement; and (ii) any employee stock options granted to you prior to or during the term of this Agreement shall become vested as of your employment termination date, and you shall have the right to exercise any such vested options through the end of the Term of this Agreement, but in no event later than the original term of the option.

For purposes of this Agreement a "constructive termination" shall be deemed to have occurred in the event that (i) your Base Salary as defined in Paragraph 3(a) is reduced; (ii) the Company materially breaches this Agreement; or (iii) your position is relocated outside of the Houston, Texas metropolitan area. Any resignation by you as a result of assertion of a constructive termination shall be communicated by delivery to the Chief Executive Officer of the Company within thirty (30) days from the date you had knowledge of the commencement of such constructive termination by written notice setting forth the grounds therefore, during which period the Company shall be entitled to cure or remedy the matters set forth in such notice to your reasonable satisfaction. Unless you withdraw such notice prior to the expiration of this thirty (30) day period, such resignation shall take effect upon the expiration of thirty (30) days from the date of the delivery of the notice. Any other voluntary resignation by you shall be communicated by thirty (30) days' advance written notice delivery to the Chief Executive Officer of the Company.

(d) If your employment is terminated by the Company without cause, or by you following a significant diminution in your responsibilities, authority or scope of duties, a reduction in your Base Salary, relocation of your position outside the Houston, Texas metropolitan area or a material breach of this Agreement by the Company, and such termination occurs within one year after (i) the effective date of a "change in control" (as defined below) or (ii) after the execution by the Company of an agreement, the consummation of which will constitute a "change in control," and before the effective date of a "change in control" or cancellation of such agreement, then you shall receive the following items as your sole compensation in lieu of the payments and benefits described in Paragraph 3 hereof: (i) a lump sum amount equal to 2.99 times the greater of (a) your average annual Base Salary and annual cash bonus amount pursuant to the Company's Incentive Compensation Plan as described in Paragraph 3(b) for the three calendar years immediately prior to the calendar year of your employment termination date or (b) your Base Salary and target annual cash bonus amount under the Company's Incentive Compensation Plan as described in Paragraph 3(b) for the year in which your employment is terminated; (ii) a lump sum amount equal to the value of the 401(k) Plan matching contribution and Portable Retirement Plan benefit you otherwise would have received through the end of the Term of this Agreement; (iii) for a period of thirty-six (36) months from your employment termination date, all medical, dental and vision benefits the Company was maintaining for you and your family as of your employment termination date; and (v) any employee stock options granted to you prior to or during the Term of this Agreement shall become vested as of your employment termination date, and you shall have the right to exercise any such vested options through the end of the Term of this Agreement, but no event later than the original term of the option. The continued medical, dental and vision benefits referenced herein are contingent upon the Company and your payment of its and your respective portion of the premium required for each such benefit.

For purposes of this Agreement, "change in control" shall mean (1) a merger of the Company with another entity, a consolidation involving the Company, or the sale of all or substantially all of the assets of the Company to another entity if, in any such case, (A) the holders of equity securities of the Company immediately prior to such transaction or event do not beneficially own immediately after such transaction or event equity securities of the resulting entity entitled to 60% or more of the votes then eligible to be cast in the election of directors generally (or comparable governing body) of the resulting entity in substantially the same proportions that they owned the equity securities of the Company immediately prior to such transaction or event or (B) the persons who were members of the Board immediately prior to such transaction or event shall not constitute at least a majority of the board of directors of the resulting entity immediately after such transaction or event, (2) the dissolution or liquidation of the Company, (3) when any person or entity, including a "group" as contemplated by Section 13(d)(3) of the Exchange Act, acquires or gains ownership or control (including, without limitation, power to vote) of more than 20% (which percentage shall be increased to 40% in the case of ownership or control by ChevronTexaco Corporation or a "group" of which ChevronTexaco Corporation is a part) of the combined voting power of the outstanding securities of, (A) if the Company has not engaged in a merger or consolidation, the Company, or (B) if the Company has engaged in a merger or consolidation, the resulting entity, or (4) as a result of or in connection with a contested election of directors, the persons who were members of the Board immediately before such election shall cease to constitute a majority of the Board. For purposes of the preceding sentence, (i) "resulting entity" in the context of a transaction or event that is a merger, consolidation or sale of all or substantially all assets shall mean the surviving entity (or acquiring entity in the case of an asset sale) unless the surviving entity (or acquiring entity in the case of an asset sale) is a subsidiary of another entity and the holders of common stock of the Company receive capital stock of such other entity in such transaction or event, in which event the resulting entity shall be such other entity, and (ii) subsequent to the consummation of a merger or consolidation that does not constitute a Change in Control, the term "Company" shall refer to the resulting entity and the term "Board" shall refer to the board of directors (or comparable governing body) of the resulting entity.

(e) If you die, or become disabled and cannot perform your duties, your employment hereunder shall be terminated and you (or your estate) shall receive: (i) your Base Salary for twelve (12) months following the month in which your employment is terminated, and (ii) for a period of twelve (12) months from the date your employment is terminated, all medical, dental and vision benefits that the Company was maintaining for you and/or your family as of the date your employment is terminated. In addition, any employee stock options granted to you prior to or during the term of this Agreement shall become vested as of the date of the termination of your employment due to death or disability, and you (or your estate) shall have the right to exercise any such vested options for a period of twelve (12) months from the date your employment is terminated. For purposes of this Agreement, you shall be disabled as of the first date on which you become eligible to receive disability benefits under the Company's long-term disability plan (or Social Security disability benefits at a time when the Company does not maintain a long-term disability plan or such plan is not available to you).

(f) Any termination of your employment after the expiration of the Term of this Agreement shall be subject to the Company's practices and procedures, including severance and other employee benefit plans.

Unless otherwise specified herein, all payments under this Agreement shall be paid in a lump sum, less applicable withholding taxes, within thirty (30) days following your termination.

3. **Compensation**

(a) During the term of this Agreement, you will be paid a base annual salary of $320,000.00, payable in accordance with the Company's payroll guidelines. Your salary will be reviewed each year and may be increased, but not decreased, in such amounts as may be determined by the Company. Increases may be made to your Base Salary at the discretion of the Board of Directors based upon your individual performance. There is no guarantee of a salary increase at any time.

(b) You shall participate in the Company's Incentive Compensation Plan. The target bonus for your position is 50% of your base annual salary, dependent upon certain financial or performance objectives, determined in accordance with such program, and by the Board. Your bonus compensation can be within a range of 12% to 75% of your annual base salary. Incentive awards are paid to eligible employees based on overall company, business unit, and individual performance with emphasis placed on competitive market reward levels and with differentiation made for stronger performers. Award ranges are subject to change based on market competitive norms. In the sole discretion of the Board, incentive awards in excess of the 200% target bonus range may be made in non-cash equivalents including, but not limited to, grants of options to purchase shares of Class A Common Stock of the Company or grants of restricted shares of Class A Common Stock of the Company. There is no guarantee of a bonus payment at any time. You must be an active employee on payroll on the date the awards are distributed to receive an award.

(c) You will receive, on the Effective Date, a grant of 90,000 fair market value Non-Qualified Stock Options (the "Options") to purchase common stock in Dynegy Inc. The Options will be priced as of the date of your employment with the Company as Executive Vice President and Chief Counsel, and will vest, in accordance with the applicable stock option plan, in thirds on each anniversary of the option grant date until fully vested. During the term of this Agreement, you will also be eligible to receive an annual stock option award of Class A Common Stock of the Company. Such option grants will be made dependent upon certain financial or performance objectives, determined in accordance with such program, and by the Board. Option grant ranges are subject to change based on market competitive norms, and the Company may award options below the target range referenced above in its sole discretion. There is no guarantee of a grant of options at any time. Any options granted to you will have an exercise price equal to the highest closing price reported on the NYSE for Class A Common Stock of the Company on the date of grant in accordance with the requirements and provisions of the Company's currently applicable option grant program. Any options granted during the term of this Agreement are subject to the vesting, forfeiture and other terms and conditions of the option grant program under which they were granted. You recognize that any value of an award of "market" options is a projected value, which is subject to the future performance of the Company stock, and that there is no guarantee that the actual value of such options will achieve that value. The valuation method to determine the actual number of stock options to be granted will be the Black-Scholes valuation of the option on the date of grant, as approved by the Options Committee of the Board of Directors of the Company.

(d) Within 30 days of the Effective Date, the Company shall pay to you $200,000.00 as a sign-on bonus for the execution of this agreement.

(e) You shall be eligible to participate in such other plans and receive such other perquisites as the Board of Directors of the Company in its sole discretion determines, including, but not limited to, four (4) weeks of paid vacation per annum.

4. <u>Confidentiality, Non-Competition and Non-Solicitation</u>

You recognize and acknowledge that:

(a) You will have access to certain information concerning the Company that is confidential and proprietary and constitutes valuable and unique property of the Company. You agree that you will not at any time, either during or after your employment, disclose to others, use, copy or permit to be copied, except pursuant to your duties on behalf of the Company or its successors, assigns or nominees, any secret or confidential information of the Company (whether or not developed by you) without the prior written consent of the Board of Directors of the Company. The term "secret or confidential information of the Company" (sometimes referred to herein as "Confidential Information") shall include, without limitation, the Company's plans; strategies; potential acquisitions; costs; prices; systems for buying, selling, and/or trading natural gas, natural gas liquids, crude oil, coal, electricity, bandwidth and communications services; client lists; pricing policies; financial information; the names of and pertinent information regarding suppliers; computer programs; policy or procedure manuals; training and recruiting procedures; accounting procedures; the status and content of the Company's contracts with its suppliers or clients; or servicing methods and techniques at any time used, developed, or investigated by the Company; before or during your tenure of employment to the extent any of the foregoing are (i) not generally available to the public and (ii) maintained as confidential by the Company. You further agree to maintain in confidence any confidential information of third parties received as a result of your employment and duties with the Company. The foregoing restrictions shall not apply if you are required by legal process, statute or regulation to disclose such information.

(b) At the termination of your employment you will deliver to the Company, as determined appropriate by the Company, all correspondence, memoranda, notes, records, client lists, computer systems, programs, or other documents and all copies thereof made, composed or received by you, solely or jointly with others, and which are in your possession, custody, or control at such date and which are related in any manner to the past, present, or anticipated business of the Company.

(c) To protect and safeguard the Company's trade secrets and Confidential Information and also the Company's goodwill with its suppliers and clients, for a period of six (6) months following the termination of your employment for any reason you will not, within a 50 mile radius of the Company's principal office, without the prior written consent of the Board of Directors of the Company, directly or indirectly, engage in (as owner, partner, shareholder, employee, director, agent, consultant or otherwise) any business which is a competitor of the Company, as hereinafter defined. The restrictions contained in the preceding paragraph shall not apply in the event the Company repudiates this Agreement or if you have not received all compensation for which you are eligible in Paragraph 3 herein. For purposes of this Agreement, a "competitor of the Company" is any entity, including without limitation a corporation, sole proprietorship, partnership, joint venture, syndicate, trust or any other form of organization or a parent, subsidiary or division of any of the foregoing, which, during such period or the immediately preceding fiscal year of such entity, was engaged in the unregulated marketing, gathering, transportation or processing of natural gas or derivatives of natural gas or other hydrocarbons or electricity. For purposes of this paragraph, the following entities shall not be deemed to be competitors of the Company: (i) a Local Distribution Company; (ii) a company which is predominantly an oil or natural gas producer; (iii) a natural gas pipeline company in the jurisdictional aspects of its business; or (iv) an integrated regulated electric and/or gas utility, as long as the utility does not engage in the unregulated marketing of its generation or power trading other than that related to the generation and power marketing allocated to its own service areas. The terms of this Paragraph 4(c) shall not apply to your present or future investments in the securities of companies listed on a national securities exchange or traded on the over-the-counter market to the extent such investments do not exceed one percent (1%) of the total outstanding shares of such company.

(d) For a period of two (2) years after the expiration or termination of your employment for whatever reason, you shall not, either on your own behalf or on behalf of your new employer (either directly or indirectly via a corporate recruiter or headhunter) induce or otherwise entice any employee of the Company to leave the Company, nor shall you attempt to hire any of the Company's employees.

(e) You agree that the foregoing restrictions contain reasonable limitations as to the time, geographical area, and scope of activity to be restrained and that these restrictions do not impose any greater restraint than is necessary to protect the goodwill and other legitimate business interests of the Company, including but not limited to the protection of Confidential Information. You also agree that the general public shall not be harmed by enforcement of this Paragraph 4. Should any provision in this Paragraph 4 be held unreasonably broad with respect to the restrictions as to time, geographical area, or scope of activity to be restrained, any such restriction shall be construed by limiting and reducing it to the extent necessary to render it reasonable, and as so construed, such provision shall be enforced.

Accordingly, you consent and agree that if you violate any of the provisions of this Paragraph 4, the Company and its subsidiaries and affiliated companies would sustain irreparable harm and, therefore, in addition to any other remedies which the Company may have under this Agreement or otherwise, the Company shall be entitled to an injunction from any court of competent jurisdiction restraining you from committing or continuing any such violation of this Paragraph. You acknowledge that damages at law would not be an adequate remedy for violation of this Paragraph 4, and you therefore agree that the provisions of this Paragraph 4 may be specifically enforced against you in any court of competent jurisdiction. Nothing herein shall be construed as prohibiting the Company from pursuing any other remedies available to the Company for such breach or threatened breach, including the recovery of damages from you.

5. Arbitration

The parties hereto may attempt to resolve any dispute hereunder informally via mediation or other means. Otherwise, any controversy or claim arising out of or relating to this Agreement, or any breach thereof, shall, except as provided in Paragraph 4, be adjusted only by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon such award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in the City of Houston, Texas, or such other place as may be agreed upon at the time by the parties to the arbitration. The arbitrator(s) shall, in their award, allocate between the parties the costs of arbitration, which shall include reasonable attorneys' fees of the parties, as well as the arbitrator's fees and expenses, in such proportions as the arbitrator deems just.

6. Indemnification

If, at any time during or after the Term of this Agreement, you are made a party to, or are threatened to be made a party in, any civil, criminal or administrative action, suit or proceeding by reason of the fact that you are or were a director, officer, employee, attorney or agent of the Company, or of any other corporation or any partnership, joint venture, trust or other enterprise for which you served as such at the request of the Company, then you shall be indemnified by the Company, to the fullest extent permitted under applicable law, against expenses actually and reasonably incurred by you or imposed on you in connection with, or resulting from, the defense of such action, suit or proceeding, or in connection with, or resulting from, any appeal therein if you acted in good faith and in a manner you reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe your conduct was unlawful, except with respect to matters as to which it is adjudged that you are liable to the Company or to any other corporation, partnership, joint venture, trust, enterprise or third party individual for gross negligence or willful misconduct in the performance of your duties. As used herein, the term "expenses" shall include all obligations actually and reasonably incurred by you for the payment of money, including, without limitation, attorneys' fees, judgments, awards, fines, penalties and amounts paid in satisfaction of a judgment or in settlement of any such action, suit or proceeding, except amounts paid to the Company or such other corporation, partnership, joint venture, trust or other enterprise by you. The foregoing indemnification provisions shall be in addition to any other rights to indemnification to which you may be entitled.

7. Other Provisions

(a) THIS AGREEMENT WILL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICTS OF LAW, RULE OR PRINCIPLE THAT MIGHT OTHERWISE REFER TO THE SUBSTANTIVE LAW OF ANOTHER JURISDICTION.

(b) Except as otherwise indicated, this Agreement is not assignable without the written authorization of both parties; except that the Company may assign this Agreement to any entity to which the Company transfers substantially all of its assets or to any entity which is a successor to the Company by reorganization, incorporation, merger or similar business combination.

(c) Except as otherwise provided herein, the provisions of Paragraphs 4, 5, 6 and 7 of this Agreement shall survive the termination of this Agreement.

(d) This Agreement supersedes all previous employment agreements, whether written or oral, between the Company and you. This Agreement may be amended only by written amendment duly executed by both parties and their legal representatives and authorized by action of the Board. Except as otherwise specifically provided in this Agreement, no waiver by either party hereto of any breach by the other party hereto of any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of a subsequent breach of such condition or provision or a waiver of a similar or dissimilar provision or condition at the same or at any prior or subsequent time.

(e) Any notice or other communication required or permitted pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given when hand delivered or mailed by United States mail, first class, postage prepaid and registered with return receipt requested, addressed to the intended recipient at his or its address set forth below and, in the case of a notice or other communication to the Company, directed to the attention of the Board of Directors with a copy to the Secretary of the Company, or to such other address as the intended recipient may have theretofore furnished to the sender in writing in accordance herewith, except that until any notice of change of address is received, notices shall be sent to the following addresses:

If to you:

Carol F. Graebner
101 Westcott, No. 1804
Houston, TX 77007

If to the Company:

Chief Executive Officer
Dynegy Inc.
1000 Louisiana St., Suite 5800
Houston, TX 77002

(f) If any one or more of the provisions or parts of a provision contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision or part of a provision of this Agreement, but this Agreement shall be reformed and construed as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and such provisions or part thereof shall be reformed so that it would be valid, legal and enforceable to the maximum extent permitted by law.

(g) You shall not be required to mitigate damages (or the amount of any compensation provided under this Agreement to be paid) following your termination of employment, by seeking employment or otherwise.

(h) Neither you nor the Company will make or authorize any public statement disparaging the other in its or his business interests and affairs. Notwithstanding the foregoing, neither party shall be (i) required to make any statement which it or he believes to be false or inaccurate, or (ii) restricted in connection with any litigation, arbitration or similar proceeding or with respect to its response to any legal process.

(i) The waiver by the Company of breach of any provision of this Agreement by you shall not operate or be construed as a waiver of any subsequent breach by you. The waiver by you of a breach of any provision of this Agreement by the Company shall not operate or be construed as a waiver of any subsequent breach by the Company.

(j) The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(k) This Agreement may be executed in one or more counterparts, which shall, collectively and separately, constitute one agreement.

(l) Notwithstanding anything to the contrary set forth in this Agreement, the Company may cause any of its subsidiaries for which you render services to pay or otherwise satisfy, in whole or in part, some or all of the Company's obligations hereunder.

If the foregoing reflects your understanding of the terms of your employment with the Company, please execute each copy of this letter in the space provided below.

DYNEGY INC.

By: /s/ Bruce A. Williamson

Bruce A. Williamson
President and Chief Executive Officer

AGREED AND ACCEPTED this 11th day of March 2003.

/s/ Carol F. Graebner
Carol F. Graebner

EX-10.18 5 dex1018.htm AMENDMENT TO THE DYNEGY INC. 401(K) SAVINGS PLAN, EFFECTIVE JANUARY 1,2004

EXHIBIT 10.18

AMENDMENT TO THE DYNEGY INC. 401(K) SAVINGS PLAN

WHEREAS, Dynegy Inc. (the "Company") maintains the Dynegy Inc. 401(k) Savings Plan (the "Plan");

WHEREAS, the Plan was last amended and restated effective January 1, 2002 to incorporate "good faith" amendments for compliance with the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA");

WHEREAS, the Company desires to permit catch-up contributions effective January 1, 2004 in accordance with EGTRRA;

WHEREAS, Rev. Proc. 2002-29 requires that qualified defined contribution plans be amended by the end of the first plan year beginning on or after January 1, 2003 to comply with the final and temporary regulations of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended (the "Code") and provides model amendments for such purpose;

NOW THEREFORE, in consideration of the premises, the Plan is hereby amended as follows:

I.

Effective January 1, 2004, a new Section 3.10 is hereby added to the Plan to provide as follows:

"3.10 Catch-up Contributions. Effective January 1, 2004, all Eligible Employees who are eligible to make elective deferrals under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Section 402(g) and 415 of the Code. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions. Notwithstanding any other provision of the Plan, catch-up contributions shall not be matched by Employer Contributions."

II.

Effective January 1, 2003, the Plan is hereby amended to provide as follows:

"Minimum Distribution Requirements. Rev. Proc. 2002-29 requires that qualified defined contribution plans be amended by the end of the first Plan Year beginning on or after January 1, 2003, to comply with final and temporary regulations under Section 401(a)(9) of the Code, relating to required minimum distributions, and provides model amendments for this purpose. The following provisions reflect such model amendments, but are not intended to provide any right to any optional form of distribution not otherwise provided in the Plan.

(a) General Rules.

(i) Effective Date. The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(ii) Precedence. The requirements of this Section will take precedence over any inconsistent provisions of the Plan.

(iii) Requirements of Treasury Regulations Incorporated. All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code.

(iv) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act ("TEFRA") and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(b) Time and Manner of Distribution.

(i) Required Beginning Date. The Member's entire interest will be distributed, or begin to be distributed, to the Member no later than the Member's required beginning date.

(ii) Death of Member Before Distributions Begin. If the Member dies before distributions begin, the Member's entire interest will be distributed, or begin to be distributed, no later than as follows:

(A) If the Member's surviving spouse is the Member's sole designated beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age 70½, if later.

(B) If the Member's surviving spouse is not the Member's sole designated beneficiary, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died.

(C) If there is no designated beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

(D) If the Member's surviving spouse is the Member's sole designated beneficiary and the surviving spouse dies after the Member but before distributions to the surviving spouse begin, this Subsection (b)(ii), other than Subsection (b)(ii)(A), will apply as if the surviving spouse were the Member.

For purpose of this Subsection (b)(ii) and Subsection (d), unless Subsection (b)(ii)(D) applies, distributions are considered to begin on the Member's required beginning date. If Subsection (b)(ii)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Subsection (b)(ii)(A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Member before the Member's required beginning date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under Subsection (b)(ii)(A)), the date distributions are considered to begin is the date distributions actually commence.

(iii) Forms of Distribution. Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Subsections (c) and (d) of this Section. If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

(c) Required Minimum Distributions During Member's Lifetime.

(i) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Member's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(A) the quotient obtained by dividing the Member's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Member's age as of the Member's birthday in the distribution calendar year; or

(B) if the Member's sole designated beneficiary for the distribution calendar year is the Member's spouse, the quotient obtained by dividing the Member's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Member's and spouse's attained ages as of the Member's and spouse's birthdays in the distribution calendar year.

(ii) Lifetime Required Minimum Distributions Continue Through Year of Member's Death. Required minimum distributions will be determined under this Subsection (c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Member's date of death.

(d) Required Minimum Distributions After Member's Death.

(i) Death On or After Date Distributions Begin.

(A) Member Survived by Designated Beneficiary. If the Member dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Member's death is the quotient obtained by dividing the Member's account balance by the longer of the remaining life expectancy of the Member or the remaining life expectancy of the Member's designated beneficiary, determined as follows:

(1) The Member's remaining life expectancy is calculated using the age of the Member in the year of death, reduced by one for each subsequent year.

(2) If the Member's surviving spouse is the Member's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Member's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(3) If the Member's surviving spouse is not the Member's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Member's death, reduced by one for each subsequent year.

(B) No Designated Beneficiary. If the Member dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Member's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Member's death is the quotient obtained by dividing the Member's account balance by the Member's remaining life expectancy calculated using the age of the Member in the year of death, reduced by one for each subsequent year.

(ii) Death Before Date Distributions Begin.

(A) Member Survived by Designated Beneficiary. If the Member dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Member's death is the quotient obtained by dividing the Member's account balance by the remaining life expectancy of the Member's designated beneficiary, determined as provided in Subsection(d)(i).

(B) No Designated Beneficiary. If the Member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Member's death, distribution of the Member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Member dies before the date distributions begin, the Member's surviving spouse is the Member's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Subsection (b)(ii)(A), this Subsection (d)(ii) will apply as if the surviving spouse were the Member.

(e) Definitions.

(i) Designated beneficiary. The individual who is designated as the beneficiary under the applicable section of the Plan and is the designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(ii) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Member's required beginning date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Subsection (b)(ii). The required minimum distribution for the Member's first distribution calendar year will be made on or before the Member's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Member's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(iii) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(iv) Member's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(v) Required beginning date. The date specified in Section 401(a)(9)(C) of the Code."

Except as herein modified, the Plan shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment has been executed this 23rd day of December, 2003, to be effective as of the date set forth above.

Dynegy Inc.

By: /s/ TERESA L. NAYLOR

Name: Teresa L. Naylor

Title:

EX-10.19 6 dex1019.htm FIRST AMENDMENT TO DYNEGY INC. 401(K) SAVINGS PLAN, EFFECTIVE FEBRUARY 11,2002

EXHIBIT 10.19

FIRST AMENDMENT TO
DYNEGY INC. 401(K) SAVINGS PLAN

WHEREAS, Dynegy Inc. (the "Company") and other Employers have heretofore adopted the Dynegy Inc. 401(k) Savings Plan (the "Plan") for the benefit of their eligible employees; and

WHEREAS, the Company amended and restated the Plan on behalf of itself and the other Employers, effective as of January 1, 2002; and

WHEREAS, the Company desires to further amend the Plan on behalf of itself and the other Employers;

NOW, THEREFORE, the Plan shall be amended as follows, effective as of February 11, 2002:

1. Section 3.9(c) of the Plan shall be deleted and the following shall be substituted therefor:

"(c) Any Eligible Employee desiring to effect a Rollover Contribution to the Plan must follow the procedures prescribed by the Committee for such purpose. The Committee may require as a condition to accepting any Rollover Contribution that such Eligible Employee furnish any evidence that the Committee in its discretion deems satisfactory to establish that the proposed Rollover Contribution is in fact eligible for rollover to the Plan and is made pursuant to and in accordance with applicable provisions of the Code and Treasury regulations. All Rollover Contributions to the Plan must be made in cash; provided, however, that an NNG Pipeline Employee may make a direct Rollover Contribution to the Plan pursuant to Paragraph (b) in kind to the extent that any distribution from the Enron Corp. Savings Plan (the "Enron Plan") to such Eligible Employee that is to be so rolled over to the Plan consists of an outstanding loan to such Eligible Employee from the Enron Plan. For purposes of the preceding sentence, the term "NNG Pipeline Employee" means an Eligible Employee who is a former Participant in the Enron Plan and who became employed by an Employer in connection with the Company's acquisition of the Northern Natural Gas Pipeline from Enron Corp. on January 31, 2002. A Rollover Contribution shall be credited to the Rollover Contribution Account of the Eligible Employee for whose benefit such Rollover Contribution is being made as of the day such Rollover Contribution is received by the Trustee."

2. As amended hereby, the Plan is specifically ratified and reaffirmed.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed this 6th day of February, 2002.

DYNEGY INC.

BY: /s/ Jane D. Jones

Name: Jane D. Jones
Title: Vice President, Rewards and Technology

EX-10.20 7 dex1020.htm SECOND AMENDMENT TO DYNEGY INC. 401(K) SAVINGS PLAN, EFFECTIVE JANUARY 1,2002

EXHIBIT 10.20

**SECOND AMENDMENT TO
DYNEGY INC. 401(K) SAVINGS PLAN**

WHEREAS, Dynegy Inc. (the "Company") and other Employers have heretofore adopted the Dynegy Inc. 401(k) Savings Plan (the "Plan") for the benefit of their eligible employees; and

WHEREAS, the Company amended and restated the Plan on behalf of itself and the other Employers, effective as of January 1, 2002; and

WHEREAS, the Company desires to further amend the Plan on behalf of itself and the other Employers;

NOW, THEREFORE, the Plan shall be amended as follows, effective as of January 1, 2002:

1. The following new paragraph (h) shall be added to the end of Section 8.3 of the Plan:

"(h) Paragraphs (b), (d), and (e) above notwithstanding: (1) a Member who was employed by Northern Natural Gas Company ('NNGC') on the date of the closing of the sale of NNGC to MidAmerican Energy Holdings Company or an affiliate thereof shall have a 100% Vested Interest in his Employer Contribution Account on such date; (2) a Member whose employment was involuntarily terminated by the Employer for a reason other than Cause (as hereafter defined) during the Plan Year beginning on January 1, 2002, shall have a 100% Vested Interest in his Employer Contribution Account on the date of such termination; and (3) a Member whose employment was involuntarily terminated by the Employer for a reason other than Cause during the Plan Year beginning on January 1, 2003, shall have a 100% Vested Interest in his Employer Contribution Account on the date of such termination if such Member was notified of such termination and his 'transition' status in connection with the Employer's reduction in force that occurred on October 21, 2002. For purposes of the preceding sentence, a Member's employment shall be considered to have been involuntarily terminated by the Employer for Cause if such termination is by reason of such Member's (i) conviction of a misdemeanor involving moral turpitude or a felony, (ii) engagement in conduct which is injurious (monetarily or otherwise) to the Employer or any of its affiliates (including, without limitation, misuse of the Employer's or an affiliate's funds or other property), (iii) engagement in gross negligence or willful misconduct in the performance of such individual's duties, (iv) willful refusal without proper legal reason to perform such individual's duties and responsibilities, (v) material breach of any material provision of any agreement between the Employer and such individual, or (vi) material breach of any material corporate policy maintained and established by the Employer that is of general applicability to Members."

2. As amended hereby, the Plan is specifically ratified and reaffirmed.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed this 19th day of December, 2002.

DYNEGY INC.

BY: /s/ Andrea Lang

Name: Andrea Lang
Title: Sr. VP H.R.

EX-10.21 8 dex1021.htm THIRD AMENDMENT TO DYNEGY INC. 401(K) SAVINGS PLAN, EFFECTIVE OCTOBER 1,2003

EXHIBIT 10.21

THIRD AMENDMENT TO
DYNEGY INC. 401(K) SAVINGS PLAN

WHEREAS, Dynegy Inc. (the "Company") and other Employers have heretofore adopted the Dynegy Inc. 401(k) Savings Plan (the "Plan") for the benefit of their eligible employees; and

WHEREAS, the Company amended and restated the Plan on behalf of itself and the other Employers, effective as of January 1, 2002; and

WHEREAS, the Company desires to further amend the Plan on behalf of itself and the other Employers;

NOW, THEREFORE, the Plan shall be amended as follows, effective for payroll periods ending on or after October 1, 2003:

1. Sections 3.3 and 3.4 of the Plan shall be deleted and the following shall be substituted therefor:

"3.3 Employer Matching Contributions.

(a) For each payroll period, the Employer shall contribute to the Trust, as Employer Matching Contributions, an amount that equals 100% of the Before-Tax Contributions that were made pursuant to Section 3.1 on behalf of each of the Members during such payroll period and that were not in excess of 5% of each such Member's Compensation for such payroll period.

(b) In addition to the Employer Matching Contributions made pursuant to Paragraph (a) above, for each Plan Year the Employer shall contribute to the Trust, as Employer Matching Contributions, an amount equal to the difference, if any, between (1) 100% of the Before-Tax Contributions that were made pursuant to Section 3.1 on behalf of each of the Eligible Members during such Plan Year and that were not in excess of 5% of each such Eligible Member's Compensation for such Plan Year and (2) the Employer Matching Contributions made pursuant to Paragraph (a) above for each such Eligible Member for such Plan Year. For purposes of this Paragraph, the term "Eligible Member" shall mean each Member who was an Eligible Employee on the last day of the applicable Plan Year.

(c) Employer Matching Contributions pursuant to Paragraph (a) above shall be contributed to the Trust at the same time the related Before-Tax Contributions are contributed to the Trust, and Employer Matching Contributions pursuant to Paragraph (b) above shall be contributed to the Trust at the time determined by the Committee. At the sole discretion of the Directors or the Compensation Committee of the Company's Board of Directors, Employer Matching Contributions on behalf of Participants shall be made in cash, in whole shares of Company Stock, or in any combination of cash and whole shares of Company Stock.

3.4 **Employer Discretionary Contributions**. For each Plan Year, the Employer may contribute to the Trust, as an Employer Discretionary Contribution, an additional amount as determined in its discretion. If it has been so determined that an Employer Discretionary Contribution shall be made for any Plan Year, then such contribution shall be made in cash, in whole shares of Company Stock, or in any combination of cash and whole shares of Company Stock (as determined in the sole discretion of the Directors or the Compensation Committee of the Company's Board of Directors)."

2. As amended hereby, the Plan is specifically ratified and reaffirmed.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed this 17th day of October, 2003.

DYNEGY INC.

BY: /s/ Teresa L. Naylor

Name: Teresa L. Naylor
Title:

EX-10.28 9 dex1028.htm SECOND SUPPLEMENT TO THE DYNEGY INC. EXECUTIVE SEVERANCE PAY PLAN

Exhibit 10.28

SECOND SUPPLEMENT TO THE
DYNEGY INC. EXECUTIVE SEVERANCE PAY PLAN

ARTICLE I

INTRODUCTION.

Dynegy Inc., an Illinois corporation (the "Company"), and its participating subsidiaries and affiliated entities have heretofore established the Dynegy Inc. Executive Severance Pay Plan (the "Plan"). The Plan specifically provides that Dynegy Inc. may amend, modify or supplement the Plan at any time. This Second Supplement to the Dynegy Inc. Executive Severance Pay Plan (the "Second Supplement") is hereby adopted as an amendment and supplement to the Plan on behalf of the Company and all of its subsidiaries and affiliates that participate in the Plan. The Second Supplement to the Plan is intended to provide severance benefits to certain Eligible Employees whose employment is terminated under certain circumstances on or after the date upon which occurs a "Change in Control", as defined herein, of the Company. The severance benefits provided under the Second Supplement to the Plan shall be in lieu of the severance benefits, if any, that would have otherwise been provided under the Plan upon such termination of employment.

ARTICLE II

DEFINITIONS AND CONSTRUCTION.

2.1 **Definitions**. Where the following words and phrases appear in the Second Supplement to the Plan, they shall have the respective meanings set forth below, unless their context clearly indicates to the contrary.

(a) **"Board"** shall mean the Board of Directors of the Company.

(b) **"Change in Control"** shall mean: (1) a merger of the Company with another entity, a consolidation involving the Company, or the sale of all or substantially all of the assets of the Company to another entity if, in any such case, (A) the holders of equity securities of the Company immediately prior to such transaction or event do not beneficially own immediately after such transaction or event equity securities of the resulting entity entitled to sixty percent (60%) or more of the votes then eligible to be cast in the election of directors (or comparable governing body) of the resulting entity in substantially the same proportions that they owned the equity securities of the Company immediately prior to such transaction or event or (B) the persons who were members of the Board immediately prior to such transaction or event do not constitute at least a majority of the board of directors of the resulting entity immediately after such transaction or event; (2) the dissolution or liquidation of the Company, in each case having substantially the effect specified in Section 12.30 of the Illinois Business